



# **The Commonwealth of Massachusetts**

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## **DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

D.T.E. 05-GAF-P1

July 10, 2006

Petition of Bay State Gas Company for approval of 2005/2006 Peak Cost of Gas Adjustment Clause Filing.

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### **HEARING OFFICER RULING ON MOTION FOR CONFIDENTIAL TREATMENT**

#### **I. INTRODUCTION**

On November 10, 2005, Bay State Gas Company ("Bay State" or "Company") filed a response to an Information Request in the above-referenced proceeding. Bay State simultaneously filed a motion seeking confidential treatment ("Motion") of certain information in the response. However, the Company did not provide a sunset period for protection of the requested information. There are no intervenors in this proceeding.

#### **II. STANDARD OF REVIEW**

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D, permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by

an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) (“specifically or by necessary implication exempted from disclosure by statute”).

G.L. c. 25, § 5D, establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute “trade secrets, [or] confidential, competitively sensitive or other proprietary information”; second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by “proving” the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D, reflect the narrow scope of this exemption. See Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996) (protecting from disclosure electricity contract prices, but not other contract terms, such as the identity of the customer); Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

All parties are reminded that requests for protective treatment have not and will not be granted automatically by the Department. A party's willingness to enter into a non-disclosure agreement with other parties does not resolve the question of whether the response, once it becomes a public record in one of our proceedings, should be granted protective treatment. In short, what parties may agree to share and the terms of that sharing are not dispositive of the Department's scope of action under G.L. c. 25, § 5D, or c. 66, § 10. See Boston Edison Company, D.T.E. 97-95, Interlocutory Order on (1) Motion for Order on Burden of Proof, (2) Proposed Nondisclosure Agreement, and (3) Requests for Protective Treatment (July 2, 1998).

### III. BAY STATE'S MOTION FOR CONFIDENTIAL TREATMENT

Bay State seeks confidential treatment of certain material in its response to Information Request DTE-1-2. Specifically, Bay State contends that the names of the competitive suppliers and marketers in its service territory and the territories in which those suppliers operate must be kept confidential (Motion at 1). The Company asserts that responding appropriately to the information request required Bay State to disclose competitively sensitive information relative to the loads of the competitive entities serving Bay State's large transportation customers (id. at 2). Bay State further contends that the information is not available at any time in the public domain, and that because the suppliers and marketers are not parties to the docket, they are unable to seek protection on their own behalf (id.).

#### IV. ANALYSIS AND FINDINGS

Bay State bears the burden of proving that the information for which protection is sought constitutes trade secrets, or confidential, competitively sensitive, or proprietary information. G.L. c. 25, § 5D. I find that Bay State has met its burden. Specifically, the Company has shown that certain aspects of the response to the Information Request are competitively sensitive and thus should be afforded confidential treatment. See, e.g., Bay State Gas Company, D.T.E. 04-111 (2005); Bay State Gas Company, D.T.E. 02-52 (2002).

In seeking protective treatment, Bay State does not propose any sunset provision. The risk of competitive harm from public disclosure of these confidential materials decreases with time as the information becomes stale. Accordingly, confidential treatment of these materials will terminate on November 31, 2008. Prior to that time, Bay State may renew its request for confidential treatment, accompanied by proof of the need for such protection.

#### V. RULING

Bay State's Motion is granted as discussed herein. Under the provisions of 220 C.M.R. § 1.06(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal.

\_\_\_\_\_/s/  
Carol M. Pieper  
Hearing Officer